

FINDINGS OF FACT AND CONCLUSIONS OF LAW

above statutes, the Board finds that the appeal by claimant with regard to this issue should be dismissed.

Claimant worked as a mechanic for respondent in its radiator department. This required lifting anywhere from 10 to 150 pounds on a regular basis. Claimant alleges he began suffering low back complaints in September of 2001. Claimant acknowledges he has had long-term back problems. Respondent's owner, Scott Simpson, testified that he had known claimant since 1986 and claimant had had ongoing back complaints since that time.

The record is uncontradicted that claimant did have ongoing symptoms while employed with respondent. However, the Order of the Administrative Law Judge does not deny that claimant suffered accidental injury with respondent, but instead found that claimant's ongoing problems were connected to intervening accidents and employments since claimant's last date of employment with respondent on October 16, 2001.

Claimant testified to having worked several different jobs since that time, including in-home care to a lady named Shirley Miller, the mother of a friend. This job required that he assist her in climbing in and out of chairs and in and out of beds on a regular basis. This lasted for approximately five months. At the time of the January 9, 2003 preliminary hearing, claimant denied that he did any lifting while working for Ms. Miller. However, the medical reports from Merle J. Fieser, M.D., contained in Respondent's Exhibit A, showed that claimant had an increase in back pain while lifting Ms. Miller.

Additionally, claimant worked for an employer named Pro Maintenance, a roofing company. This necessitated that claimant work on roofs, which required substantial bending and stooping on a regular basis. Claimant acknowledged that he suffered flare-ups while performing this work. It also necessitated that he go to the emergency room on several occasions. Claimant continued receiving pain medication from his treating doctor, Howard L. Wilcox, M.D., and also from Dr. Fieser. Since February of 2002, claimant had been prescribed Vioxx, Celebrex, Oxycodone, Hydrocodone and Ultram. Claimant also worked for friends of his, roofing their house. This involved approximately two weeks of work and included between twelve and sixteen squares of material.

Finally, on a Sunday two to four weeks prior to claimant's December 17, 2002 deposition, claimant fell down a flight of stairs. Claimant testified in one instance that he suffered no problems at the time. In another instance, claimant testified his back became worse, with him initially believing he had broken his tailbone. Claimant also testified that his back pain went from a three and a half, on a one-to-ten basis, to nine after the fall down the stairs. Claimant also testified his back pain then returned to approximately a level five.

In workers' compensation litigation, it is claimant's burden to prove his entitlement to benefits by a preponderance of the credible evidence.¹ The Board finds that claimant did suffer accidental injury arising out of and in the course of his employment with respondent during the approximately ten years that he worked as a mechanic. However, since claimant's termination of employment on or about October 16, 2001, claimant has worked numerous other jobs, which involved lifting, bending and stooping. These jobs, on several occasions, not only required claimant to go to the emergency room for pain medication, but also required that claimant be on substantial pain medications almost continuously since leaving respondent's employment. The Board finds that claimant has not proven that his current need for medical benefits or temporary total disability compensation results from his employment with respondent, but is, as indicated by the Administrative Law Judge, connected to the intervening accidents and employments of claimant since that time. The Board, therefore, finds that the determination by the Administrative Law Judge to deny claimant benefits at this time should be affirmed.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the February 26, 2003 preliminary hearing Order of Administrative Law Judge Bruce E. Moore should be, and is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of April 2003.

BOARD MEMBER

c: Scott J. Mann, Attorney for Claimant
James M. McVay, Attorney for Respondent
Bruce E. Moore, Administrative Law Judge
Director, Division of Workers Compensation

¹ K.S.A. 44-501 and K.S.A. 2001 Supp. 44-508(g).